

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Level 3 Petition for Forbearance From)	WC Docket No. 03-266
Assessment Of Access Charges On Voice)	
Embedded IP Communications)	DA 04-1
)	

**JOINT COMMENTS
of the
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE,
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.,
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES,
and
UNITED STATES TELECOM ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The Independent Telephone and Telecommunications Alliance (ITTA),¹ the National Exchange Carrier Association (NECA),² the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)³ and the United States Telecom Association (USTA)⁴ (the Associations) hereby submit these comments in response to the Federal Communications Commission's (Commission or FCC) Public

¹ ITTA represents thirteen midsize carriers ranging in size from about 60,000 lines to about 3 million lines. ITTA members principally serve smaller markets - smaller cities and rural areas across the country. Collectively, ITTA member companies serve over 10 million lines in forty states.

² NECA has administered the Federal Communications Commission's access charge plan since 1983. NECA's expertise includes rate and tariff development, industry database management, compliance auditing, economic forecasting, trend analysis and regulatory policy analysis.

³ OPASTCO is a national trade association representing over 550 small incumbent LECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

⁴ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

Notice⁵ seeking comment on the December 23, 2003 Petition for Forbearance⁶ filed by Level 3 Communications LLC (Level 3).

The Associations urge the Commission to deny Level 3's petition for forbearance. It should explicitly reject the petition's illogical request to withhold compensation from certain rural ILECs based upon the fact that they are no longer subject to the rural exemption. Instead, the Commission should declare that all voice services that utilize the Public Switched Telephone Network (PSTN), regardless of the technology they use to transmit voice signals, are subject to duly approved access charges that may be assessed by LECs for the use of their networks.

II. THE PETITION ASKS FOR AN EXEMPTION FROM PAYING ACCESS CHARGES, BUT DOES NOT DEMONSTRATE HOW THE USE OF VOIP TECHNOLOGY REDUCES LECs' COST OF PROVIDING ACCESS SERVICES

The petition requests that the Commission forbear from enforcing certain parts of its rules and the Communications Act of 1934, as amended (the Act) that permit LECs to obtain reasonable compensation for the use of their local exchange networks.⁷ Yet the petition fails to explain how the use of IP technology to transport a voice call reduces a LECs' cost of providing access services in any way.⁸ The fact is, the use of an alternate technology for transporting interexchange traffic has absolutely no impact on the access costs a LEC will incur. The mere use of VoIP technology to transport a voice call must not be turned into an excuse for obtaining access to the PSTN for free or at below-cost

⁵ *Pleading Cycle Established For Petition of Level 3 for Forbearance from Assessment of Access Charges on Voice-Embedded IP Communications*, WC Docket No. 03-266, Public Notice, DA 04-1 (rel. Jan. 2, 2004).

⁶ *Level 3 Petition for Forbearance Under 47 U.S.C. §160(c) from Enforcement of 47 U.S.C. §251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed Dec. 23, 2003) (petition).

⁷ Petition, pp. 5-6.

⁸ The petition suggests that ILECs could undertake burdensome procedures at the federal or state levels to

rates. If the petition were granted, it would provide an artificial regulatory incentive for toll providers to use a particular technology for voice transport in order to avoid access charges. Meanwhile, the ability of rural LECs to meet the considerable costs associated with maintaining and upgrading their networks would be seriously impaired. As Commissioner Adelstein astutely observed during the Commission's December 1, 2003 VoIP Forum: "We cannot afford to let the rise of VoIP to [sic] undercut the very networks that carry it."⁹

Inevitably, if one segment of PSTN users – such as VoIP providers – are permitted to obtain below-cost access to the network, other users, notably residential subscribers, will eventually be required to pay more or face a degradation in service quality. Furthermore, network upgrades necessary for the further deployment of advanced services would likely face delays. In spite of these serious drawbacks, the petition asserts that it would be in the "public interest" to allow VoIP traffic to obtain an exemption from access charges, under the theory that this would help develop new services.¹⁰ While the encouragement of technological innovation is certainly a worthy goal, the petition ignores the key question of how consumers will enjoy the benefits of various VoIP services if the underlying PSTN is compromised.

Level 3's petition rejects the principle of technological neutrality in an effort to receive preferential treatment for its chosen transport medium. It demands complete faith in an unconfirmed assumption that the presumed benefits of this preferential treatment will exceed all costs. At its worst, the petition appears to be nothing more than an

recover their costs. *Ibid.*, p. 47. These procedures would be disproportionately onerous for small carriers.

⁹ Statement of Commissioner Jonathan S. Adelstein, Voice Over IP Forum (December 1, 2003), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-241774A1.doc.

¹⁰ Petition, p. 38.

attempt to twist the enhanced service provider access charge exemption into a means to avoid providing LECs with just and reasonable compensation for the use of their networks.

Furthermore, the petition fails all three forbearance criteria established in section 10 of the Act.¹¹ As demonstrated above, granting the petition would favor VoIP providers at the expense of facilities-based LECs and their customers, contrary to section 10(a)(1).¹² Section 10(a)(2) states that forbearance may only be granted if a rule is not necessary to protect consumers.¹³ Access charge rules are necessary to prevent companies like Level 3 from forcing LECs and their customers to absorb the significant costs of providing access, as this petition seeks. Finally, section 10(a)(3) notes that forbearance may only occur when it is consistent with the public interest.¹⁴ The discriminatory treatment sought by the petition risks higher costs and/or degradation of service for consumers, both of which are clearly contrary to the public interest. Many critical issues related to the growth of services based on IP technology are being properly addressed by the Commission in its ongoing intercarrier compensation docket (CC 01-92) and the IP-enabled services docket (WC 04-36). Therefore, the Commission should deny Level 3's petition and affirm that LECs have the right to assess lawful access charges for all voice traffic that traverses their networks, regardless of transport technology. Failure

¹¹ 47 U.S.C. § 160

¹² See 47 U.S.C. § 160 (a)(1) (stating that “enforcement of such regulation or provision is not necessary to ensure that charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory”).

¹³ See 47 U.S.C. § 160 (a)(2) (stating that “enforcement of such regulation or provision is not necessary for the protection of consumers”).

¹⁴ See 47 U.S.C. § 160 (a)(3) (stating that “forbearance from applying such provision or regulation is consistent with the public interest”).

to act quickly on this petition will only result in further regulatory uncertainty, impeding the ability of carriers to plan for network upgrades and obtain capital financing.

III. THE PETITION'S REQUEST TO WITHHOLD COMPENSATION FOR ACCESS SERVICES FROM SOME RURAL ILECS, WHILE AGREEING TO PROVIDE IT TO OTHERS, LACKS ANY RATIONAL BASIS

Despite statements to the contrary, Level 3 is admitting access charges apply to its services by seeking forbearance from access rules. Its petition explicitly does not seek forbearance from access charges for transport of VoIP-based calls to LECs operating within the geographic service area of an ILEC that retains the rural exemption provided for under section 251(f) of the 1996 Act.¹⁵ Yet the petition also illogically proposes to withhold access compensation from those rural ILECs that have had their exemption lifted. The petition is devoid of any rationale for the proposed disparate treatment, nor does it explain how rural consumers would benefit if one set of rural LECs received compensation for access to their networks, but others did not.

The petition does not attempt to establish any logical connection between a rural LEC's right to cost recovery through duly approved access charges and the rural exemption. This is understandable, because the rural exemption has nothing to do with access charges. The exemption applies only to the provisions of section 251(c) of the 1996 Act.¹⁶ This section of the Act describes ILECs' obligations regarding negotiation, interconnection, unbundled access, resale, notice of changes, and collocation with other carriers. These obligations are completely unrelated to every LEC's right to be compensated by other carriers for the costs incurred from providing access services to them. Even in areas where the rural exemption has been lifted, ILECs are permitted,

¹⁵ Petition, p. 8, citing 47 U.S.C. § 251(f).

under section 252 of the Act, to charge carriers for the interconnection, services, or network elements they provide.¹⁷ The petition, in contrast, proposes to withhold payment for access services from this subset of rural carriers, defying all logic.

In many instances, state commissions have lifted rural carriers' rural exemptions following *bona fide* requests for interconnection services or network elements from another carrier. However, when doing so, the state commission never considered that it might significantly impact a rural LEC's cost recovery from access charges, as requested by the petition. Had state commissions been aware of this possibility, many may well have reached a different conclusion when deciding whether or not to lift an exemption.

If granted, Level 3's petition would adversely impact many rural LECs and their customers in ways that state commissions could never have envisioned at the time the exemptions were lifted. The petition's request to withhold duly approved access charges from a subset of rural LECs completely lacks a rational basis and would have untold ramifications for the PSTN and rural subscribers. The Commission should therefore immediately deny the petition's request for forbearance.

IV. CONCLUSION

Level 3's petition seeks to excuse VoIP providers from compensating LECs for the costs of providing access to their networks, while ignoring the questions of how LECs should recover the considerable costs of network maintenance and upgrades, and the impacts on subscribers. Open FCC dockets on IP-enabled services and intercarrier compensation are more appropriate venues for exploring questions regarding the impacts of new technologies on the PSTN and the way in which LECs recover their costs. Until

¹⁶ 47 U.S.C. § 251(c).

these proceedings are completed, the Commission should provide regulatory certainty by immediately denying Level 3's petition. The petition must also be rejected because it proposes to compensate one subset of rural LECs for access expenses, while denying this compensation to other rural LECs without even attempting to explain the rationale for its proposed bifurcation.

Finally, Level 3's petition fails to meet the criteria set forth under section 10 of the Act. As demonstrated above, Level 3 does not meet the three criteria for forbearance because its petition: favors VoIP providers at the expense of facilities-based LECs and their customers; nullifies the FCC's rules for VoIP providers and forces LECs and their customers to absorb the significant costs of providing access; and seeks discriminatory treatment of LECs, which risks higher costs and/or degradation of service for consumers. Hence, Level 3's petition should be denied under section 10 of the Act and dismissed, as being contrary to the public interest.

Respectfully submitted,

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¹⁷ 47 U.S.C. § 252.

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March 1, 2004

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by the Associations was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 1st day of March, 2004, to those listed on the attached sheet.

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